

Remarks/Arguments

Claims 30 to 39 remain pending in the application.

Double Patenting

Applicant respectfully submits that claims 30 to 39 do not claim the same invention of United States Patent No. 7,049,580, based on Application Serial No. 10/310,003, cited against the claims of this application under 35 U.S.C. 101.

As set out on page 800-19 of the MPEP, a reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, then identical subject matter is not defined by both claims and statutory double patenting does not exist.

Firstly, all currently pending claims of the instant application are directed to an apparatus while all the claims of the cited patent are directed to a method. As rightly pointed out in the Action mailed on June 29, 2004 in connection with U.S.S.N. 10/310,003, the method could be performed by numerous types of mass spectrometers.

Further, there are differences in the literal scope of the claims not recognized in the action of April 18, 2006. Claims 30, 37 and 39 of the instant application are independent. Each of claims 30 and 37, for example, requires a linear ion trap. Independent claim 1 of the '580 patent has no such requirement. Each of remaining independent claims 8, 14, 19 and 26 of the '580 patent, for example, requires resonantly exciting ions for a period exceeding approximately 25 milliseconds while none of independent claims 30, 37 and 39 of the instant application includes such a requirement. It is thus clear on its face that it is possible to literally infringe each

independent claim of the instant application without literally infringing an independent claim in the patent.

Applicant thus submits that rejection of the claims of this application under 35 U.S.C. 101 is improper and respectfully requests withdrawal of the rejection.

Applicant believes that all issues raised in the outstanding action have been addressed by the amendments made herein, and respectfully request allowance of the application.

In the event that any official wishes to telephone, the call should be directed to the undersigned at (416) 865-8121.

Yours very truly,



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Date

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